

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION

FILED  
05 SEP 22 PM 3:55  
U.S. DISTRICT COURT  
N.D. OF ALABAMA

PAMELA SHIRLEY BROWNING, )  
)  
PLAINTIFF, )  
)  
V. )  
)  
WAL-MART STORES, INC., )  
)  
DEFENDANT. )

CV-05-BE-2003-W

**DEFENDANT'S MOTION TO SEVER AND REMAND**

COMES NOW Defendant, Wal-Mart Stores East, LP (improperly identified in the Complaint as Wal-Mart Stores, Inc.), and pursuant to 28 U.S.C. §1445(c), and moves this Court to sever and remand Count I of Plaintiff's Complaint, on the following grounds:

1. This case, styled *Pamela Shirley Browning v. Wal-Mart Stores, Inc.*, was filed on or about August 22, 2005, in the Circuit Court of Bibb County, Alabama, bearing Civil Action No. CV 05-129 on the docket of that Court. In Count I of Plaintiff's Complaint, she stated a claim for benefits under the Alabama Workers' Compensation Act. In Count II, Plaintiff asserted a tort of outrage claim.

2. Defendant has filed a Notice of Removal contemporaneously herewith.

3. Plaintiff's claim for benefits under the Alabama Workers' Compensation Act is a non-jury issue matter that should be decided in State court. According to 28 U.S.C. § 1445(c), "a civil action in any State court arising under the workman's compensation laws of such State may not be removed to any district court of the United States." *See also Fed Reserve Bank of Atlanta v. Thomas*, 220 F.3d 1235 (11<sup>th</sup> Cir. 2000).

4. Under Alabama state law, "the usual procedure where a claimant has filed a complaint seeking both workmen's compensation and tort relief is for these two claims to be severed." *Raines v. Browning-Ferris Ind.*, 638 So. 2d 1334, 1337 (Ala. Civ. App. 1993).

5. Accordingly, Defendant respectfully requests this Court to sever Count I of Plaintiff's Complaint and to enter an Order remanding it back to State court.

Respectfully submitted this the 22<sup>nd</sup> day of September, 2005.



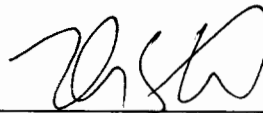
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#### **CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing pleading upon all counsel of record in this cause by placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 22<sup>nd</sup> day of September, 2005:

John E. Warren, III, Esq.  
H. H. "Chip" Nation, IV, Esq.  
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Of Counsel